

SUBJECT: Legislative continuances

COMMITTEE: State Affairs: committee substitute recommended

VOTE: 8 ayes--Laney, Ceverha, Millsap, Bomer, P. Hill,
Horn, Keller, Short

4 nays--Davis, Gilley, Green, C. Smith

1 present, not voting--Stiles

2 absent--Bush, Pennington

WITNESSES: For--Tom Rickoff, district judge, Bexar County;
Sam Millsap, district attorney, Bexar County

Against--None

BACKGROUND: Under VACS art. 2168a, if a legislator is a party
or an attorney in a case pending within 30 days
before or after a session of the Legislature,
the judge must continue (postpone) the case until
30 days after adjournment. The legislator must
file an affidavit, which need not be corroborated,
that he or she intends to participate actively
in the case.

A legislative continuance is discretionary if
the legislator-attorney was employed within ten
days of the date on which a suit was to be tried.
Judicial interpretation has allowed legislative
continuances to be waived when irreparable harm
might be caused to a party.

DIGEST: CSHB 214 would reduce the period in which legislative
continuances must be granted to one day before
a session and seven days after.

Legislative continuances would be made discretionary
in additional situations--if the legislator-attorney
was employed in a criminal suit within 90 days
before the beginning of a regular session, or
if a party, including the prosecutor in a criminal
case, might suffer irreparable damage or injury
or might be unable to present fully his or her
case due to the delay.

An application for a legislative continuance would
have to be filed not later than the 15th day before
court action was required or before the third
day after notice of the action was received, which-
ever was later. A sworn affidavit would have

DIGEST: to be filed, stating that the party or attorney
(continued) was a legislator who was or would be in actual attendance at a legislative session, and that the continuance was not sought only for delay. The affidavit for a legislator-attorney would also have to state: that the legislator was participating actively in the case and was not employed primarily for the purpose of delaying the case; when the legislator was first employed in the case; and the beginning and ending dates of the session.

Making a false statement in the affidavit would be considered a crime involving moral turpitude.

If the application for discretionary continuance were denied, the party would be granted a reasonable amount of time to prepare his or her case.

If the legislative continuance were granted, the judge could order the legislator-attorney to be present at all future proceedings unless later excused.

Regardless of the provisions making a legislative continuance discretionary, it would be mandatory when the legislator was serving as a court-appointed attorney.

SUPPORTERS CSHB 214 would tighten up the legislative-continuance
SAY: law to prevent demonstrated abuses but would still require mandatory postponement in legitimate cases. CSHB 214 would strike a middle ground for legislators who are trial lawyers, allowing trial delays when necessary to prevent conflict with the session, but not when the legislator had been hired merely to stall a case.

Allegations that legislators "sell" continuances, by hiring out as participants in a case to force delays, create a public perception that justice can be bought and sold, undermining confidence in both the Legislature and the judicial system. Abuses have been widespread across the state, not just in certain areas. Delay can be crucial in criminal cases; witnesses can move and their memories can fade over time. CSHB 214 would set stiffer standards for mandatory continuances, particularly in criminal cases, in which the public as a whole suffers from unwarranted delay. It would also require that legislators swear to participate actively in a case before it can be automatically postponed.

SUPPORTERS SAY:
(continued) CSHB 214 would not forbid continuances, it would just allow greater judicial discretion in certain cases. If a legislative continuance were denied, the party would still be granted a reasonable time to prepare. Since the Legislature conducts daily business only about three months every two years, greater judicial discretion probably would not produce an excessive burden.

OPPONENTS SAY: CSHB 214 would give judges too much discretion in granting legislative continuances. Legislators who earn their living as trial lawyers would be at the mercy of judges who could set a trial during the height of a legislative session. As a result, legislator-attorneys would have to choose between their duties to their clients and to their constituents, a dilemma that would effectively bar many trial lawyers from serving in the Legislature. Because of the unique situation of trial lawyers, it would be discriminatory to water down the current mandatory provision.

Any abuses of the legislative continuance have been relatively rare and have been publicized mostly in San Antonio. Why should the law for the entire state be changed due to a local political controversy? Any postponement is at most seven months, hardly a long delay in any event. If legislative continuances are not being granted properly, by judges or by legislators, the voters can decide if any abuses have occurred and vote accordingly.

NOTES: The original version of HB 214 would have repealed art. 2168a, eliminating mandatory legislative continuances.

HB 214 was originally referred to the Judicial Affairs Committee and was re-referred to the State Affairs Committee on Feb. 24.